

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLIFFORD HERRIOTT,

Defendant.

No. CR 06-07-LRR

FINAL JURY INSTRUCTIONS

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NUMBER _____

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NUMBER _____

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdicts should be.

INSTRUCTION NUMBER _____

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you just verdicts, unaffected by anything except the evidence, your common sense and the law as I give it to you.

INSTRUCTION NUMBER _____

I have mentioned the word “evidence.” The “evidence” in this case consists of the following: the testimony of the witnesses, the stipulations of the parties and the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Anything that might have been said by jurors or the attorneys during the jury selection process is not evidence.
2. Statements, arguments, questions and comments by the lawyers are not evidence.
3. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
4. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
5. Anything you saw or heard about this case outside the courtroom is not evidence.

During the trial, documents were referred to but they were not admitted into evidence and, therefore, they will not be available to you in the jury room during deliberations.

INSTRUCTION NUMBER ____

You have heard a certain category of evidence called “other acts” evidence. Here you have heard evidence that the defendant had dealings with customers other than those named in the Indictment (Norman Watson and Gary Gibson) and other financial transactions with financial institutions other than those named in the Indictment (Deutsche Financial Services Corporation, Transamerica Finance Corporation and Shoreland’r). You may not use this “other acts” evidence to decide whether the defendant carried out the acts involved in the crimes charged in the Indictment. In order to consider “other acts” evidence at all, you must first unanimously find, beyond a reasonable doubt, based on the rest of the evidence introduced, that the defendant carried out the acts involved in the crimes charged in the Indictment. If you make this finding, then you may consider the “other acts” evidence to decide the defendant’s intent, knowledge and absence of mistake. “Other acts” evidence must be proven by a preponderance of the evidence; that is, you must find that the evidence is more likely true than not true. This is a lower standard of proof than proof beyond a reasonable doubt. If you find that this evidence is proven by a preponderance of the evidence, you should give it the weight and value you believe it is entitled to receive. If you find that it is not proven by a preponderance of the evidence, then you must disregard such evidence.

Remember, even if you find that the defendant may have committed acts other than those charged in the Indictment, this is not evidence that he committed such acts in this case. You may not convict a person simply because you believe he may have committed acts other than those charged in the Indictment. The defendant is on trial only for the crimes charged, and you may consider the evidence of “other acts” only on the issue of his intent, knowledge and absence of mistake.

INSTRUCTION NUMBER _____

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witness to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NUMBER _____

The government and the defendant have stipulated – that is, they have agreed – that a certain fact is true. You must, therefore, treat that fact as having been proved.

INSTRUCTION NUMBER _____

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to each witness who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

INSTRUCTION NUMBER _____

In a previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony.

You have heard evidence that Art Nelson, Jr. was once convicted of a crime. You may use that evidence only to help you decide whether to believe the witness and how much weight to give his testimony.

INSTRUCTION NUMBER ____

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdicts. You are not to tamper with the exhibits or their contents, and each exhibit should be returned into open court, along with your verdicts, in the same condition as it was received by you.

INSTRUCTION NUMBER ____

The Indictment in this case charges the defendant with eight separate offenses. Under Counts 1 through 8, the Indictment charges that the defendant executed and attempted to execute a scheme and artifice to defraud, in that the defendant sold, traded or otherwise disposed of Citizen Savings Bank-financed boats and trailers without thereafter repaying Citizen Savings Bank. The defendant has pleaded not guilty to each of these charges.

As I told you at the beginning of trial, an Indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find a defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crimes charged.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

There is no burden upon the defendant to prove that he is innocent.

INSTRUCTION NUMBER ____

Counts 1 through 8 of the Indictment charge the defendant with bank fraud. The defendant may be found guilty of these offenses under one of the two following alternatives: (1) executing a scheme to defraud and (2) attempting to execute a scheme to defraud.

First Alternative: Executing a Scheme to Defraud

The crime of bank fraud, as charged in Counts 1 through 8 of the Indictment, has three essential elements, which are:

One, the defendant knowingly executed a scheme to defraud a financial institution in that the defendant sold, traded or otherwise disposed of the following Citizen Savings Bank-financed boats and trailers without thereafter repaying Citizen Savings Bank:

Count 1: sale of Sea Ark boat and Shoreland'r trailer to Nessie Buffalo on June 15, 2002;

Count 2: sale of Alumacraft boat to David Davis on July 3, 2002;

Count 3: sale of Alumacraft boat to Steve Krakow on July 6, 2002;

Count 4: sale of Alumacraft boat to Russell Hagen on July 6, 2002;

Count 5: sale of Alumacraft boat to Lynn Swanson on July 9, 2002;

Count 6: sale of Alumacraft boat to Steve Titcomb and Alicia Titcomb on August 8, 2002;

Count 7: sale of G3 boat and trailer to Harold Underhill on August 20, 2002; and

(CONTINUED)

INSTRUCTION NUMBER _____ (Cont'd)

Count 8: sale of Alumacraft boat to Everett Leonard on August 23, 2002;

Two, the defendant did so with the intent to defraud; and

Three, the financial institution was insured by the United States Government.

To find the defendant guilty of bank fraud, the government must prove all of these essential elements beyond a reasonable doubt as to the count under consideration by you. If the government failed to prove any essential element beyond a reasonable doubt, then you must find the defendant not guilty of the crime charged in the count under consideration by you.

Second Alternative: Attempting to Execute a Scheme to Defraud

The defendant may be found guilty of bank fraud, even if he attempts, but does not succeed, in the bank fraud. For you to find the defendant guilty of attempting to execute bank fraud, the government must prove each of the four following essential elements beyond a reasonable doubt:

One, the defendant knowingly intended to execute a scheme to defraud a financial institution in that the defendant sold, traded or otherwise disposed of the following Citizen Savings Bank-financed boats and trailers without thereafter repaying Citizen Savings Bank:

Count 1: sale of Sea Ark boat and Shoreland'r trailer to Nessie Buffalo on June 15, 2002;

Count 2: sale of Alumacraft boat to David Davis on July 3, 2002;

(CONTINUED)

INSTRUCTION NUMBER _____ (Cont'd)

Count 3: sale of Alumacraft boat to Steve Krakow on July 6, 2002;

Count 4: sale of Alumacraft boat to Russell Hagen on July 6, 2002;

Count 5: sale of Alumacraft boat to Lynn Swanson on July 9, 2002;

Count 6: sale of Alumacraft boat to Steve Titcomb and Alicia Titcomb on August 8, 2002;

Count 7: sale of G3 boat and trailer to Harold Underhill on August 20, 2002; and

Count 8: sale of Alumacraft boat to Everett Leonard on August 23, 2002;

Two, the defendant did so with the intent to defraud;

Three, the defendant took a substantial step toward executing a scheme to defraud a financial institution; and

Four, the financial institution was insured by the United States Government.

To find the defendant guilty of bank fraud, the government must prove all of these essential elements beyond a reasonable doubt as to the count under consideration by you. If the government failed to prove any essential element beyond a reasonable doubt, then you must find the defendant not guilty of the crime as to the count under consideration by you.

(CONTINUED)

INSTRUCTION NUMBER _____ (Cont'd)

The phrase “scheme to defraud” includes any plan or course of action intended to deceive or cheat another out of money or property by employing material falsehoods, concealing material facts and omitting material facts.

A fact, falsehood or representation is “false” when it is untrue when made or effectively conceals or omits a material fact. A fact, falsehood or representation is “material” if it has a natural tendency to influence, or is capable of influencing, the decision of the institution in deciding whether to engage or not to engage in a particular transaction. However, whether a fact, falsehood, representation or promise is “material” does not depend on whether the institution was actually deceived.

INSTRUCTION NUMBER _____

To act with “intent to defraud” means to act knowingly and with the intent to deceive someone for the purpose of causing some financial loss or loss of property to another or bringing about some financial gain to oneself or another to the detriment of a third party.

It is not necessary that the government prove all of the details alleged in the Indictment concerning the precise nature and purpose of the scheme or that the alleged scheme actually succeeded in defrauding anyone.

INSTRUCTION NUMBER _____

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have previously mentioned, it is entirely up to you to decide what facts to find from the evidence.

INSTRUCTION NUMBER _____

One of the issues in this case is whether the defendant acted in good faith. Good faith is a complete defense to the charge of bank fraud if it is inconsistent with intent to defraud which is an essential element of the charge.

Fraudulent intent is not presumed or assumed; it is personal and not imputed. Good faith constitutes a complete defense to one charged with an offense of which fraudulent intent is an essential element. One who acts with honest intention is not chargeable with fraudulent intent. Evidence which establishes only that a person made an innocent mistake or an error in management, or was careless, does not establish fraudulent intent. In order to establish fraudulent intent on the part of a person, it must be established that the person knowingly and intentionally attempted to deceive another. One who knowingly and intentionally attempted to deceive another is chargeable with fraudulent intent notwithstanding the manner and form in which the deception was attempted.

Evidence that the defendant acted in good faith may be considered by you, together with all the other evidence, in determining whether or not he acted with intent to defraud.

INSTRUCTION NUMBER _____

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NUMBER _____

An act is done “knowingly” if the defendant realized what he was doing and did not act through ignorance, mistake or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. You may consider the evidence of the defendant’s acts and words, along with all other evidence, in deciding whether the defendant acted knowingly.

INSTRUCTION NUMBER _____

You will note the Indictment charges that offenses were committed “on or about” certain dates. The government need not prove with certainty the exact date or the exact time period of an offense charged. It is sufficient if the evidence established that an offense occurred within a reasonable time of the date or period of time alleged in the Indictment.

INSTRUCTION NUMBER _____

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NUMBER _____

In conducting your deliberations and returning your verdicts, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because a verdict—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or simply to reach a verdict.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

(CONTINUED)

INSTRUCTION NUMBER _____ (Cont'd)

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or court security officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

Finally, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. Each verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdicts should be—that is entirely for you to decide.

INSTRUCTION NUMBER _____

Attached to these instructions you will find Verdict Forms. These Verdict Forms are simply the written notice of the decisions that you reach in this case. The answers to these Verdict Forms must be the unanimous decisions of the jury.

You will take the Verdict Forms to the jury room, and when you have completed your deliberations and each of you has agreed on answers to the Verdict Forms, your foreperson will fill out the Forms, sign and date them and advise the marshal or court security officer that you are ready to return to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return such verdicts as accord with the evidence and these instructions.

DATE

**LINDA R. READE
JUDGE, U. S. DISTRICT COURT**

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLIFFORD HERRIOTT,

Defendant.

No. CR 06-07-LRR

VERDICT FORM - COUNT 1

We, the Jury, find the defendant, Clifford Herriott, _____ of
the crime of bank fraud, as charged in Count 1 of the Indictment.
Not Guilty / Guilty

FOREPERSON

DATE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLIFFORD HERRIOTT,

Defendant.

No. CR 06-07-LRR

VERDICT FORM - COUNT 2

We, the Jury, find the defendant, Clifford Herriott, _____ of
Not Guilty / Guilty
the crime of bank fraud, as charged in Count 2 of the Indictment.

FOREPERSON

DATE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLIFFORD HERRIOTT,

Defendant.

No. CR 06-07-LRR

VERDICT FORM - COUNT 3

We, the Jury, find the defendant, Clifford Herriott, _____ of
Not Guilty / Guilty
the crime of bank fraud, as charged in Count 3 of the Indictment.

FOREPERSON

DATE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLIFFORD HERRIOTT,

Defendant.

No. CR 06-07-LRR

VERDICT FORM - COUNT 4

We, the Jury, find the defendant, Clifford Herriott, _____ of
Not Guilty / Guilty
the crime of bank fraud, as charged in Count 4 of the Indictment.

FOREPERSON

DATE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLIFFORD HERRIOTT,

Defendant.

No. CR 06-07-LRR

VERDICT FORM - COUNT 5

We, the Jury, find the defendant, Clifford Herriott, _____ of
Not Guilty / Guilty
the crime of bank fraud, as charged in Count 5 of the Indictment.

FOREPERSON

DATE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLIFFORD HERRIOTT,

Defendant.

No. CR 06-07-LRR

VERDICT FORM - COUNT 6

We, the Jury, find the defendant, Clifford Herriott, _____ of
Not Guilty / Guilty
the crime of bank fraud, as charged in Count 6 of the Indictment.

FOREPERSON

DATE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLIFFORD HERRIOTT,

Defendant.

No. CR 06-07-LRR

VERDICT FORM - COUNT 7

We, the Jury, find the defendant, Clifford Herriott, _____ of
Not Guilty / Guilty
the crime of bank fraud, as charged in Count 7 of the Indictment.

FOREPERSON

DATE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLIFFORD HERRIOTT,

Defendant.

No. CR 06-07-LRR

VERDICT FORM - COUNT 8

We, the Jury, find the defendant, Clifford Herriott, _____ of
Not Guilty / Guilty
the crime of bank fraud, as charged in Count 8 of the Indictment.

FOREPERSON

DATE